

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2706

IN THE MATTER OF:

Served May 21, 1985

Application of THE AIRPORT CONNEC-)
TION, INC., for a Certificate of)
Public Convenience and Necessity to)
Conduct General Charter Operations)

Case No. AP-84-38

BACKGROUND AND PROCEDURAL ISSUES

By application filed September 10, 1984, The Airport Connection, Inc. ("TAC" or "applicant"), seeks a certificate of public convenience and necessity to transport passengers and their baggage, in charter operations, between points in the Metropolitan District. 1/

Pursuant to Order No. 2610, as modified by Order No. 2619, 2/ both of which orders are incorporated herein by reference, a public hearing on the matter was held commencing November 19, 1984, and continued December 17 and 18, 1984. Gold Line, Inc. ("Gold Line" or "protestant"), and Beltway Limousine Service, Inc. ("Beltway" or "protestant"), timely protested the application and appeared at the hearings to cross-examine applicant's witnesses and to present evidence. 3/

At the close of hearings, the Administrative Law Judge ordered that briefs be filed in this case on January 21, 1985, which date was postponed to February 1, 1985, by Order No. 2652, served January 18, 1985. On February 1, 1985, filings were made by all parties. On February 13, 1985, counsel for applicant filed a Motion for Permission to File Legal Memorandum together with a legal memorandum. Staff

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- 1/ To the extent that this application can be construed to include transportation between points located solely within the Commonwealth of Virginia, it is hereby dismissed for want of jurisdiction. See Compact, Title II, Article XII, Section 1(b).
- 2/ Served September 25, 1984, and October 12, 1984, respectively.
- 3/ Red Top Coach, Inc., also filed a formal protest. However, although Red Top appeared on the first day of hearings, it withdrew its protest on December 11, 1984, and no longer opposes TAC's application.

counsel did not oppose, but protestants' counsel objected to the motion on the basis that applicant's memorandum constituted a reply brief and was therefore prohibited by the Commission's Rules of Practice and Procedure. Commission Rule No. 25-01 provides as follows:

A proceeding shall stand submitted for decision by the Commission after the taking of evidence, and the filing of such briefs or the presentation of such oral argument as may have been prescribed by the Commission or the presiding officer.

We note that oral argument was not requested or prescribed in this case. The Administrative Law Judge who presided over the evidentiary hearings in this matter admonished all parties that reply briefs would not be accepted. Although applicant's post-brief filing consists of legal argument without addressing the facts of this case, it specifically addresses elements in staff's brief and therefore is in the nature of a reply brief. Consequently, applicant's motion must be denied.

SUMMARY OF TESTIMONY

John L. Tanavage, president of TAC and vice-president of Airport Baggage Carriers, Inc. ("ABC"), testified for the applicant. TAC is a wholly-owned subsidiary of ABC, a Baltimore-based corporation which provides ground transportation for Baltimore-Washington International Airport ("BWI") pursuant to contracts with the Maryland State Aviation Administration ("SAA"). ABC also conducts general charter operations outside the Metropolitan District. TAC provides ground transportation, including charter and special operations, pursuant to contract with the Federal Aviation Administration ("FAA") between Washington National Airport, Gravelly Point, Va., and Dulles International Airport, Herndon, Va. ("the metropolitan airports"), on the one hand, and, on the other, points in the Metropolitan District and Annapolis, Md. According to Mr. Tanavage, ABC as TAC's parent is totally responsible for applicant's operations.

TAC's fleet consists of 26 to 35 11-passenger vans, 4/ five 21-passenger mini-buses and one coach. It also operates 14 coaches which are owned by FAA and, under the terms of TAC's contract with FAA, may not be used for non-airport service absent prior approval.

4/ The application indicates twenty-six 11-passenger vans. On direct-examination Mr. Tanavage testified that TAC operated thirty-five 11-passenger vans. On cross-examination, he testified that TAC's fleet consisted of six 11-passenger vans in addition to the twenty-six 11-passenger vans listed in its application, or 32 vehicles.

TAC's airport obligations require twenty-three 11-passenger vans and three mini-buses Monday through Friday. Applicant's schedule indicates that equipment requirements are lower on the weekend. With each successive contract year, applicant is obligated to provide increased airport service resulting in a need for more vehicles. TAC does not intend to dedicate any equipment to general charter operations. Mr. Tanavage testified, however, that TAC's equipment is sufficient to meet its contract obligations and to provide the general charter service for which it here seeks authority. On cross-examination, the witness stated his opinion that five mini-buses and one coach would meet TAC's equipment requirement generated by demands for general charter service throughout the Metropolitan District.

ABC has access to six coaches owned by SAA. Under its most recent contract with SAA, ABC is obligated to provide 75 percent of total BWI-Washington traffic using coaches. Any coaches not needed to provide this service are then available to ABC without restriction for use in general charter operations for a fee of \$8.18 an hour. According to Mr. Tanavage, four coaches a day are available to ABC under this provision. No prior approval is necessary from SAA. Although SAA buses are available not to applicant but to ABC, 5/ it is Mr. Tanavage's testimony that the parent company can then make the buses available to TAC without restriction of any kind other than payment to SAA.

At the hearing, applicant introduced a balance sheet for ABC dated June 30, 1984, which indicated total assets of \$159,981 including current assets of \$52,764 and investment in and advances to TAC of \$81,678. The balance sheet listed current liabilities of \$45,343, long-term liabilities of \$22,522, common stock of \$2,000, and retained earnings of \$90,116. ABC's income statement for the year ended June 30, 1984, indicated revenues of \$955,937 and expenses of \$898,025, including taxes and removal of TAC from its books, resulting in addition to retained earnings of \$57,912.

With its application TAC had submitted a balance sheet dated June 30, 1984, showing a deficit of \$7,324 to stockholders' equity. In addition, updated financial information was introduced at the hearing. A balance sheet for TAC dated September 30, 1984, indicated current assets of \$133,533, property and equipment after depreciation of \$707,468, and other assets (including a loan origination fee) of \$35,253. Current liabilities were listed at \$407,213; non-current liabilities were listed at \$480,472. Also noted were common stock of \$1,000, a deficit to retained earnings of \$19,464, and year-to-date net income of \$7,035 producing an overall loss of \$11,429. On

5/ Through a recent novation in the contract the buses have since been made available to The Airport Connection, Inc., of Maryland ("TAC-MD"), a corporate entity separate from applicant.

cross-examination, Mr. Tanavage testified that \$100,996 of current liabilities was due on a Small Business Administration loan which had been used to buy equipment, and \$102,356 was due ABC for expenses paid prior to May 1, 1984, when TAC began operations under the FAA contract. An income statement for the three months ended September 30, 1984, indicated revenues of \$907,408, including \$33,895 in charter revenues. Operating expenses, including interest but excluding income taxes, were \$900,313. A projected income statement for the first 12 months of operations for the proposed service indicated total revenues from charter service of \$300,000, of which \$165,000 would be from non-airport general charter. Total expenses, unallocated between airport charter and general charter operations, were projected at \$263,000, resulting in net profit of \$37,000.

With regard to TAC's financial condition, Mr. Tanavage testified that the carrier was performing as anticipated with the exception of airport charter revenues which were originally estimated at \$300,000 a year. For the three months ended September 30, 1984, revenues from charter operations were \$33,895. It is Mr. Tanavage's testimony that projected revenues have fallen short because TAC is restricted in its charter authority to airport transfers. According to Mr. Tanavage, lack of general charter authority has created a hardship for TAC because TAC has had to refuse requests to provide charter service outside its existing authority.

Mr. Tanavage admitted that TAC had made arrangements to provide transportation between points within the Commonwealth of Virginia, at a time when TAC lacked appropriate authority. TAC honored that commitment by arranging for another bus company to provide the service at applicant's expense. In addition, TAC had provided transportation in the nature of a tour originating and terminating at Dulles International Airport and stopping at the Iwo Jima Memorial, Arlington, Va. Applicant provided the Sleepy Hollow Senior Citizen Association, Falls Church, Va., with free service to Thurmont, Md., and Baltimore, Md., under its ICC authority and transported International Travel Advisors, a group which shares offices with TAC, between National Airport and RFK Stadium, Washington, D.C. It is Mr. Tanavage's position that anything which originates or terminates at the metropolitan airports is legal. However, he conceded that he had signed the application for airport charter authority and had been made familiar with the grant of authority awarded as a result of that application which limited airport transfers to persons with a prior or subsequent movement by air.

Leonard Metelits, director, Sleepy Hollow Senior Citizen Association ("the association"), Falls Church, Va., testified in support of the application. The association, a non-profit corporation, is a drop-in center sponsoring a variety of activities for senior citizens. The association owns one 14-passenger van which is used for daily transportation to and from its facilities and for the

approximately four trips per month which the association sponsors. Within the six months preceding Mr. Metelits' testimony, the association made trips to points in the District of Columbia including various museums. Future destinations within the Metropolitan District for which specific plans have been made include the Botanical Gardens and the Octagon House, both located in Washington, D.C., and Andrews Air Force Base, Prince George's County, Md. For trips such as these, the association generally hires transportation in the form of either an additional van or a coach. According to Mr. Metelits, 600 persons are notified by mail of upcoming trips. The number signing up for a given trip determines the type of transportation hired. There have been times when Mr. Metelits sought transportation and was unable to obtain it for economic reasons but not due to lack of availability. If TAC's application is granted, the association would charter applicant's buses or vans at least three or four times a month, assuming an increase in the number of trips taken and depending on the need for transportation in addition to that provided by the association's van.

On cross-examination, it was established that the association had never paid for any service rendered it by TAC, all of which service was outside the Metropolitan District. Mr. Metelits testified further that it was his understanding that the association will be accorded a reduced rate in the future as well as a free trip from time to time. Mr. Metelits is not familiar with TAC's tariff. However, the maximum the association has paid for van transportation has been \$35, plus 25 cents a mile van rental, plus \$5 an hour driver's wages. If TAC were more expensive than this, the association would not use its service. According to Mr. Metelits, most of his transportation needs for short distances involve van transportation. In arranging van transportation, the association first looks to its own van, second to a van through ACCA (a free service available to the association), third to rental of a vehicle either through an individual or a dealer for which the association hires a driver, and, finally, to a certificated carrier. Mr. Metelits testified that he had never used a regulated carrier for van or bus service within the District of Columbia or Prince George's or Montgomery Counties, Md. In apparent refutation of his earlier testimony, Mr. Metelits testified that he had no trips planned for December and that the association would not be using TAC more than once a month, the amount TAC has been used in the past.

Katy Dietrich, general manager of the Washington Office of USA Hosts, testified in support of the application. USA Hosts provides services for Washington conventions including transportation and tours for which it charters buses and vans. Ms. Dietrich wants to provide the best service for her client, and she prefers to use a single carrier throughout a convention in order to allow her clients ease of identification. Ms. Dietrich testified that there have been varying circumstances resulting in her not being satisfied with the service provided by other carriers. She gave two specific examples. On one occasion her work was subcontracted to another company whose equipment

was unsatisfactory because all pieces were not identically painted. More recently, she chartered vans to transport clients to a cocktail party at the Washington Convention Center. According to Ms. Dietrich, the drivers left the vans unattended. It was necessary to summon the drivers from the cocktail party in order that passengers who were outside and ready to leave could do so. Ms. Dietrich has used applicant for airport transfers and has been extremely satisfied with the service which it has provided. If TAC's application is granted, Ms. Dietrich would use it on a weekly basis. On cross-examination, Ms. Dietrich testified that although 90 percent of her business requires motor coaches, she would support TAC's application if it had no coaches in order to be able to use its 21-passenger mini-buses and 11-passenger vans. During the preceding six months, USA Hosts required van service for six groups and motor coach service for 20 groups. No van movements are booked for the future. However, four or five groups per month are anticipated for coach use. Ms. Dietrich has sometimes found it difficult, but she has never been unable to obtain coach service within the Metropolitan District.

Claire Halpert, marketing director for the St. Charles Hotel, Washington, D.C., is called, in the course of her duties, to locate transportation within the Washington area for groups and individuals staying at the St. Charles. Inquiries for charter transportation arise approximately once a week. Since April 1984, Ms. Halpert has received requests for transportation which she has been unable to meet on six occasions. Ms. Halpert testified that in July or August 1984, 60 students -- a number later changed to 26-30 -- required transportation from the St. Charles to the bus depot on one to two days' notice. Cabs were used for this movement because she was unable to locate a bus company to provide transportation. In an effort to locate a carrier, Ms. Halpert contacted D.C. Tours, a tour brokerage with whom she does business regularly. D.C. Tours was unable to provide the service and could not recommend anyone who could. Ms. Halpert called other carriers, although she could not remember which ones, and found them either booked or unauthorized to provide point to point transfers. In June or July 1984, 40 persons with business at the Japanese Embassy required transportation for four to five days in a row. Several companies listed in the yellow pages were called by her assistant without success. Because Ms. Halpert was unable to arrange the desired transportation, the St. Charles lost the booking. At the time of the public hearing, the witness was looking for transportation for 40 members of the cast of The King and I. Ms. Halpert had called five carriers without finding any company that actually provides point to point transportation in the Metropolitan District. Ms. Halpert has recommended TAC to guests both for scheduled airport service from the Washington Hilton and for airport charter service. If this application is granted, she would use TAC at least once a week for point to point charter work in the Metropolitan District.

On cross-examination, Ms. Halpert testified that she has a staff of four who make the actual arrangements for transportation using

a list of companies (she had not brought that list with her). She testified that a call for transportation was last made approximately one week earlier to D.C. Tours. Ms. Halpert was unable to name a single carrier contacted other than D.C. Tours although she was aware that Gold Line, Webb Tours, and Eyre were providing service in the area. Upon being asked by protestants' counsel if she would object to Gold Line or Beltway providing the needed service for the cast of The King and I, Ms. Halpert responded that she would not object to using their services if the price were acceptable, specifically \$2 per person per cab zone. Upon being shown a list of all WMATC certificated carriers, Ms. Halpert testified that she had contacted Gold Line although she did not remember anything about those contacts. She further testified that she had made a booking with Gold Line in the preceding two months. She also believed that she had used Webb Tours, Washington Tours, and VIP Tours. Finally, Ms. Halpert testified that she had no need for transportation outside the District of Columbia.

Cynthia Stone is a meeting planner with Arthur Young and Company, a public accounting firm. Last year Arthur Young held approximately 300 seminars at the Sheraton International Conference Center, Reston, Va., and the Sheraton National Hotel, Arlington, Va. Ms. Stone requires ground transportation services for airport transfers weekly between April and November for groups of 200 to 400 persons. In addition, ground transportation is needed for these same groups to Charlestown, W.Va., Ocean City, Md., and RFK Stadium, Washington, D.C. Her need for transportation to other hotels or meeting sites in the Washington metropolitan area is occasional. She sometimes requires transportation in vehicles other than buses, such as vans or mini-buses. Ms. Stone has used the Washington Flyer and found it to be very reliable and dependable. Ms. Stone testified that if TAC's application is granted, Arthur Young would use applicant's general charter service to points in the Metropolitan area. Ms. Stone testified that, other than transportation to the stadium which her organization would require no more than ten times a year, she has no need for transportation in the District of Columbia, or in Montgomery and Prince George's Counties, Md. In answer to questions on redirect, Ms. Stone testified that she plans to coordinate sightseeing tours into the District of Columbia. Currently she refers persons to Gray Line. 6/

Joe Bast, director of sales and marketing, Sheraton Conference Center, Reston, Va., testified in support of the application. The majority of the Conference Center's business consists of training and sales programs lasting from one week to six months. Groups using the Center frequently require charter service to points of interest in the

6/ "Gray Line" is a national association to which Gold Line, Inc., belongs. In the Washington area, "Gray Line" and Gold Line are the same carrier.

District of Columbia and to the Capital Centre, Prince George's County, Md. Mr. Bast has used TAC for airport transfers. If this application is granted, Mr. Bast would use TAC for general charter between two and ten times a month for service requiring coaches, mini-buses, and 11-passenger vans. Mr. Bast has chartered similar service in the past with mixed results. The witness testified to two incidents involving carriers other than the protestants in which unsatisfactory service was provided. In one case, the carrier arrived 35 minutes late. In another instance, because the carrier had subcontracted Mr. Bast's work and because the subcontractor was late, confusion arose between two groups. One group took the wrong bus and wound up at an incorrect destination.

On cross-examination, Mr. Bast testified that he has arranged transportation from the Sheraton Conference Center to the District of Columbia or the Capital Centre 30 to 40 times in eight months, 95 percent of the time in buses. For approximately one-half of those movements, Mr. Bast would have used mini-buses had he known of a company which had them available. The witness testified that he would have no objection to using Gold Line or Beltway. Mr. Bast testified that TAC had represented to him that it has large (45 or 47-passenger) buses. Were the record to show that TAC had only one 45-passenger bus, that would present no problem for Mr. Bast provided that one bus were available to him when he needed it. If Mr. Bast needed more buses than TAC could supply, he would simply go to another carrier. Finally, on cross-examination, Mr. Bast testified that he did not anticipate having any need for transportation in Montgomery County, Md.

Richard A. Griesbach is employed by the FAA as manager of commercial operations for the metropolitan airports. In that position, he is responsible for all ground transportation services. According to Mr. Griesbach, ground transportation is essential to the operation of the airports. The economics of ground transportation remain so marginal, however, that the FAA had difficulty attracting bidders to its Request for Proposals despite the provision of \$2,500,000 worth of new motor coach equipment and substantial organizational and advertizing aid from FAA. An additional economic problem for the ground carrier at the metropolitan airports stems from the traffic pattern at Dulles where 70 percent of total passenger flow occurs between 4 p.m. and 8 p.m. The result of this peaking pattern is the requirement of a fairly large vehicle fleet which is under-utilized at other times and, therefore, an economic burden. Consequently, according to Mr. Griesbach, not only are peak-time revenues used to cross-subsidize the off-peak time, but revenues derived from other operations, such as charter, help to maintain the scheduled service throughout the day. Mr. Griesbach characterized the service provided by TAC thus far as excellent. The FAA's position is that because applicant holds the FAA ground transportation contract, the Commission should grant general charter authority within the Metropolitan District. Mr. Griesbach testified that it is, and has been, consistent

with FAA's policy to support applications for general charter authority by its scheduled ground operators. It is FAA's opinion that such operations are essential to maintaining the general economic health of the scheduled ground transportation operator. On cross-examination, Mr. Griesbach testified that the contract does not require that TAC seek general charter authority nor is FAA a user of general charter transportation. The witness conceded that the reason for FAA's support was to foster a situation in which the ground operator obtained additional profits thereby lending support to its regular scheduled operations. Mr. Griesbach testified that there was no reason to think, based on TAC's experience to date, that TAC was in jeopardy of defaulting on its contract with FAA.

On cross-examination Mr. Griesbach testified that the general policy of FAA regarding the use of its coaches would be to restrict them to airport use. According to Mr. Griesbach, one reason an exemption was granted for the Close-Up contract was that the program is federally funded. During an audit in December 1984, FAA found only one breach of contract as to use of the FAA-owned coaches -- a lease to Gold Line for non-airport service. As to other equipment requirements under the FAA contract, Mr. Griesbach testified that the contract, which initially required twenty-five 11-passenger vans, is being modified to require six additional 11-passenger vans and five 22-passenger mini-buses. Because the contract is written to require a higher plateau of service miles each contract year, other amendments regarding additional equipment requirements can be expected.

Ronald K. Chesnik, operations manager for Gold Line, Inc., testified in opposition to the application. Mr. Chesnik testified that Gold Line is authorized to conduct charter operations between points in the Metropolitan District and is conducting that service using 88 buses. The equipment is maintained entirely in-house at a seven-acre facility in Tuxedo, Md. Administrative offices, including a charter department consisting of eight employees, are located in Washington, D.C. According to Mr. Chesnik, Gold Line aggressively seeks charter business within the Metropolitan District. For the ten months ended October 1984, the company realized \$8,810,000 in total revenues of which \$2,794,000 was from charter operations within the Metropolitan District. Gold Line's net operating loss for the ten months ended October 30, 1984, was \$408,000 as compared with net operating income of \$378,000 for the same period during the prior year. Pre-tax income was listed at \$278,000 due to the sale, for the purpose of upgrading Gold Line's fleet, of 32 coaches at a profit in excess of \$1,000,000.

Mr. Chesnik testified that his company opposes this application for three reasons. First, Gold Line provides an extremely good charter service within the Metropolitan District. Mr. Chesnik observed that no public witnesses indicated that they were unable to obtain charter service nor were any adverse comments regarding Gold Line presented by any witness. Second, the District of Columbia is a tremendously competitive marketplace, and, in his opinion, the traveling public

would not be well served by the addition of another carrier into that market. Third, Gold Line, a privately-held corporation, would be placed in an unfair competitive position if forced to compete with a subsidized carrier such as TAC for which some equipment, facilities, and advertising are provided by the federal government and the State of Maryland.

Gold Line has provided charter service to USA Hosts on a number of occasions, and Mr. Chesnik is aware of no complaints regarding that service. Gold Line has not provided service to the St. Charles Hotel. However, after Ms. Halpert's testimony, Gold Line made a number of calls to offer the service which the hotel's witness had testified was needed. No calls were returned. Gold Line has not provided any charter service for Arthur Young and Company. However, in its day-to-day operations, Gold Line has 13 coaches in Fairfax, Va., and three in Sterling Park, Va., which would be available for charter when not in use for commuter service. Gold Line has provided no service to the Sheraton International Conference Center.

On cross-examination, Mr. Chesnik agreed as a general principle that line runs are less profitable than charter operations. According to Mr. Chesnik, it is not economically feasible for a carrier to maintain a fleet geared to handling maximum demand. In cases of overbooking for WMATC moves, Gold Line contracts with other carriers including Eyre, Red Top, Franklin, T&S, Greyhound, Trailways, Metro, Beltway, and TAC. Gold Line has not had to refuse any large group (over five pieces) due to lack of equipment and would turn down business only if severely overbooked. Mr. Chesnik's office has informed the sales department to refrain from making bookings once in the past 12 months. Protestant subcontracts no work during the off-peak period. However, during peak season (April 1-November 1), Gold Line books business for which it needs to lease equipment from another carrier two to three times a month. Gold Line also leases equipment to other carriers at least once a month during this time. On Monday through Friday during peak season, approximately 90 percent of Gold Line's fleet has been used at some point during the day. However, during that same period approximately 35 percent of the fleet is available for any purpose between 9 a.m. and 4 p.m. Mr. Chesnik also testified that the Washington Convention Center has created additional need for charter operations.

According to Mr. Chesnik, Al Smith of TAC approached him and represented that he had equipment available for charter. In August 1984, Gold Line used TAC to replace a carrier which was to have provided service but had experienced some problems. Mr. Chesnik called all carriers he could think of in an effort to find a replacement. The movement was a transfer from Crystal City, Va., to Union Station, Washington, D.C., requiring six buses. According to Mr. Chesnik, there was never any understanding that a portion of the passengers involved in the transfer would be dropped at National Airport. TAC billed Gold Line at Gold Line's tariff rate less 10 percent. Sometime after the

movement, Mr. Smith made it clear to Mr. Chesnik that TAC coaches could be used for airport transfers only.

Mr. Albin Smith, applicant's charter manager, testified in rebuttal to Mr. Chesnik regarding the transfer performed by TAC for Gold Line. TAC performed the requested work, then billed Gold Line under Gold Line's tariff. Mr. Smith testified that it was his understanding, based on a telephone conversation with Mr. Chesnik and a belief that a portion of the group actually did return to National, that the trip involved a stop at National Airport. Mr. Smith admitted that he had personally made out the reservation form for the movement indicating a one-way transfer not including National Airport. Mr. Smith also testified that there have been additional times when Mr. Chesnik requested service from TAC and had been refused due to lack of authority.

Jack Robertson, president of Beltway Limousine Service, Inc., testified in opposition to the application. Beltway holds authority to conduct charter operations within the Metropolitan District with certain restrictions applicable to transportation originating in Virginia. Beltway's fleet consists of three coaches, twenty-three 14-passenger vans, twenty-two 21-passenger mini-buses, one limousine, and a tow truck. All vehicles are leased. Approximately 75 percent of Beltway's business comes from contract work. Since August 31, 1984, Beltway has lost five contracts to which 10 vehicles had been dedicated. The financial effect of this loss has been devastating, according to Mr. Robertson. As a result of the loss of contracts, Beltway, which ordinarily holds six to seven vehicles in reserve, currently has 17 vans and mini-buses unused on a daily basis.

During 1982, Beltway sustained a loss of \$87,693 and had an operating ratio of 104.1. In calendar year 1983, Beltway recognized \$1,974,488 in revenues from operations within the Metropolitan District and had other income of \$37,915. For that same year Beltway sustained a loss of \$42,000 and had an operating ratio of 102.1. Beltway's recent loss of contracts has placed it in danger of sustaining additional losses in 1984.

Beltway's marketing staff actively solicits charter business by calling on associations that hold conventions in Washington, D.C. In addition, it has a representative that calls on corporations in the area regarding assistance in their transportation needs. A third representative calls on federal, state, and local government accounts to establish Beltway as a potential bidder for transportation services. Beltway has provided service to the St. Charles Hotel and received no complaints regarding that service. Beltway also has an ongoing contract with the Kennedy Center and, therefore, has experience with theater business, one group to which the St. Charles caters. Since last spring, Beltway has provided transportation for USA Hosts between five and seven times. Beltway does business throughout the Sheraton

system and has had no complaints from Sheraton. Beltway has never been called upon to do work for Arthur Young and Company.

Beltway is opposing this application because, in Mr. Robertson's opinion, Beltway is adequately serving the public. It has excess equipment available and has not refused a request for transportation. In view of the losses which Beltway has sustained for two years in a row and may possibly face again, increased competition would further hurt the company as well as the type and quality of service which it can offer.

DISCUSSION AND CONCLUSIONS

In determining whether to grant a certificate of public convenience and necessity, we look to the standards enunciated at Title II, Article XII, Section 4(b) of the Compact as follows:

. . . the Commission shall grant a certificate . . . ,
if it finds, after hearing held upon reasonable
notice, that the applicant is fit, willing and able
to perform such transportation properly and to
conform to the provisions of this Act and the rules,
regulations, and requirements of the Commission
thereunder, and that such transportation is or will
be required by the public convenience and necessity
. . . .

Based on a review of the record in this case, we find applicant to be capable of providing the proposed service and willing to conform to applicable rules and regulations imposed by the Compact and the Commission acting pursuant to the Compact.

Applicant is an established carrier experienced at providing both special operations and airport charter transportation. Its equipment is new and regularly maintained. Applicant's president testified that TAC has sufficient equipment to meet its airport obligations and to offer general charter service. FAA's support of this application tends to corroborate this testimony. Although TAC does not intend to dedicate any equipment to general charter service, the record indicates that it operates at least twenty-six 11-passenger vans and five mini-buses pursuant to its FAA contract. At least three 11-passenger vans and two mini-buses are in excess of the number required for current weekday airport obligations, and additional equipment is available on weekends. Applicant also owns one 46-passenger coach which is uncommitted to FAA contract obligations. Although applicant's equipment needs can be expected to increase due to FAA contract provisions which require an increase in service miles offered each year, there is evidence that TAC has usually had equipment in excess of that required by its contract and that it plans to buy additional equipment during the coming year.

Applicant is thinly capitalized and as a result of its heavy investment in equipment carries a substantial debt. However, the record indicates that applicant's revenues are sufficient to cover its expenses, and its debts are further assured by its financially healthy parent, ABC. Applicant anticipates little in the way of increased expenses as a result of its general charter operations. Thus, its current financial situation is sufficiently stable to warrant a finding of financial fitness.

The record contains allegations of two isolated incidents of illegal Metropolitan District operations by applicant 7/: (1) an airport transfer for a group having neither a prior nor a subsequent movement by air, and (2) charter transportation between Crystal City, Va., and Washington, D.C. The first movement may have been outside the scope of applicant's authority. However, the record is unclear as to whether the group transported had either a prior or a subsequent movement by air. The second movement was provided under subcontract with Gold Line using Gold Line's tariff. Although this movement was clearly illegal, we note that an audit indicated that this was the sole use of FAA buses for non-airport use. Thus, the sole illegal movement on record is one to which protestant Gold Line was a party. In determining whether illegal operations constitute evidence that an applicant for a certificate of public convenience and necessity will not abide by pertinent regulatory requirements, the Commission considers the nature and extent of the violations as well as any mitigating circumstances. Here we find that although two illegal Metropolitan District movements were alleged, the evidence firmly supports only one movement as illegal, and protestant Gold Line was a willing partner to that movement. The Commission has no indication, other than this movement, that TAC is unwilling to abide by its rules and regulations. On the other hand, TAC has a history of compliance with Commission orders, and evidence of a single violation shows no pattern of illegal operations in the circumstances presented here. 8/

7/ The record also indicates that applicant offered transportation in the nature of a sightseeing tour, originating and terminating at Dulles, to a group having a subsequent movement by air. Inasmuch as the group stopped at the Iwo Jima Memorial, Arlington, Va., the tour constituted intra-Virginia transportation outside this Commission's jurisdiction. We note that the Virginia State Corporation Commission has since granted TAC general charter authority which grant constitutes a presumptive finding by that Commission of compliance fitness.

8/ We urge counsel and management of both companies involved in this to assure that employees responsible for such operations not only have a working knowledge of operating rights but are also familiar with WMATC Regulation No. 69 pertaining to leasing of equipment. Operations "under the tariff" or "under the rights" of another carrier are prohibited.

We turn now to the matter of whether applicant has satisfied its burden of proving that the public convenience and necessity require the proposed service. The Commission has relied on the test enunciated in Pan-American Bus Lines Operations (1 MCC 190, 203 [1936]) when interpreting this provision of the Compact. The Pan-American test consists of three parts as follows:

. . . whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Applicant produced six public witnesses. Based on their testimony we find that TAC proved that its proposed service meets an expressed public need, thereby serving a useful public purpose, between all points in the Metropolitan District excluding Montgomery County, Md. Ms. Dietrich (USA Hosts) requires charter service in vans, mini-buses, and coaches originating in Washington, D.C., and traveling to points of interest in the District of Columbia and Northern Virginia. Ms. Halpert (St. Charles Hotel) requires charter transportation between points within the District of Columbia. Ms. Stone (Arthur Young & Co.) requires occasional transportation into the District of Columbia from Arlington, Va. Mr. Bast (Sheraton) requires transportation to points of interest within the District of Columbia and to the Capital Centre, Landover, Md. No testimony was elicited regarding need for transportation to, from, or within Montgomery County, Md. 9/

During the course of the proceedings, Gold Line and Beltway testified that existing service was adequate to the public need for charter operations. Gold Line has provided service to USA Hosts and has received no complaints regarding that service. Protestant Gold Line attempted without success to solicit the St. Charles Hotel regarding its transportation needs at the time of public hearing. Gold Line has served no other public witnesses appearing on behalf of TAC

9/ Mr. Metelits (Sleepy Hollow Seniors) has never used a regulated carrier within the Metropolitan District and would exhaust every other possibility before doing so. Even at that, he would be able to use applicant only if provided a discounted rate, a practice which is illegal under Title II, Article XII, Section 5(d) of the Compact. Mr. Griesbach's appearance was in the nature of a representation by FAA that TAC is a fit carrier and that continued airport ground transportation requires the economic benefits to be derived from general charter operations.

but expressed its availability for mid-day charter operations originating in Northern Virginia. Beltway has provided some service to the St. Charles Hotel, USA Hosts, and the Sheraton system. Both protestants have expressed some willingness to serve applicant's witnesses. However, protestant Gold Line is heavily booked during peak season when 90 percent of its fleet is used at some point during each weekday. Gold Line itself admits that it must sometimes rely on other carriers to provide service it has booked. It named no less than nine such carriers on cross-examination. Although Beltway had 17 vans and mini-buses not in daily use at the time of public hearing, the carrier appears to dedicate the bulk of its fleet to contract operations, reserving six vehicles for general charter work. Thus, although the need for service demonstrated in this case arguably could be as well met by existing carriers, whether it would be as well met is not clear on this record given Beltway's emphasis on contract charter work, Gold Line's high occupancy rate, and the fact that several of TAC's witnesses supported this application despite having used protestants' services.

This brings us to the final aspect of the Pan-American analysis: whether the proposed service can be provided without endangering or impairing the operations of existing carriers contrary to the public interest. Both Gold Line and Beltway testified that they are currently operating at a deficit and that they are adequately serving the public. However, the evidence shows that Gold Line's Metropolitan District charter revenues are actually up from October 1983, and the deficit which it experienced for the 10 months ended October 1984 was related not to additional entry into the market of new carriers but to increased expenses including an insurance increase approaching 100 percent. Furthermore, although protestant Gold Line is a major carrier in the Metropolitan District, its fleet is heavily booked, and additional business is being created in the Washington area by the Washington Convention Center. TAC owns a single coach for use in general charter operations within the Metropolitan District. Although applicant operates 14 FAA buses, use of these buses for non-airport service requires prior approval from the FAA whose representative indicated on the record that such approval was not likely to be forthcoming. 10/ The SAA buses are available for lease to ABC or TAC-MD, both of which are separate corporate entities from TAC. If applicant leases these buses or any others, a properly executed lease must be filed with and approved by the Commission

10/ The Virginia State Corporation Commission (by order issued January 29, 1984, in Case No. MCS 840058, Application of V.I.P. Celebrity Limousines, Inc., and The Airport Connection, Inc., to Transfer a Part of a Certificate of Public Convenience and Necessity as a Special or Charter Party Carrier No. A-40) has limited TAC's authority "... to vehicles purchased, leased or provided without the use of federal funds."

pursuant to Commission Regulation No. 69 prior to each use. Thus, applicant cannot at this time be viewed as so serious a competitor of Gold Line as to endanger its operations thereby causing harm to the public interest.

Beltway, for its part, has been operating at a deficit for two years and may not have made a profit in that calendar year 1984. Its revenues are down due to loss of contract work, resulting in excess capacity. However, Beltway's loss of business is related not to competitiveness in the field of general charter operations but to the bidding process for government contracts. Given Beltway's emphasis on contract work, the fact that its equipment is leased, and that persons who have used Beltway in the past have testified to a need for additional charter service, including mini-bus and van service, we find that Beltway has failed to prove that TAC's proposed service will endanger its operations to the detriment of the public interest.

THEREFORE, IT IS ORDERED:

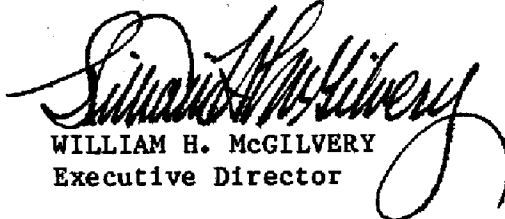
1. That the applicant's Motion for Permission to File Legal Memorandum is hereby denied.

2. That The Airport Connection, Inc., is hereby granted authority to transport passengers, together with their baggage in the same vehicle as passengers, in charter operations between points in the Metropolitan District, excluding Montgomery County, Md., on the one hand, and, on the other, points in the Metropolitan District, excluding Montgomery County, Md.

3. That The Airport Connection, Inc., is hereby directed to file a current equipment list and two copies of its WMATC Tariff No. 4.

4. That unless applicant complies with the requirements of the preceding paragraph within 30 days, or such additional time as the Commission may direct, the grant of authority herein shall be void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:


WILLIAM H. MCGILVERY
Executive Director